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GENERAL COUNSEL
OF COPYRIGHT

In the Matter of)

)
Digital Performance Right in Sound)
Recordings Rate Adjustment)
_____)

Docket No. 2001-1 CARP DSTRA 2

**JOINT PETITION FOR ADJUSTMENT OF RATES AND TERMS FOR
STATUTORY LICENSES APPLICABLE TO PREEXISTING SUBSCRIPTION
SERVICES AND REQUEST FOR IMMEDIATE STAY OF OBLIGATION TO FILE
DIRECT CASES**

Pursuant to 17 U.S.C. § 112, 114 & 803 and 37 C.F.R. § 251.63(b), the Recording Industry Association of America, Inc. ("RIAA"), the American Federation of Television and Radio Artists ("AFTRA"), the American Federation of Musicians of the United States and Canada ("AFM"), Music Choice, DMX Music, Inc. ("DMX") and Muzak LLC ("Muzak") (collectively, "Petitioners") submit this Joint Petition to advise the Copyright Office of their settlement of the controversy over rates and terms to be established in this proceeding. Specifically, the Petitioners have reached agreement on rates and terms for the use of sound recordings by preexisting subscription services for the period January 1, 2002 through December 31, 2007. Petitioners hereby request that the Office publish the attached proposed rates and terms for public comment pursuant to 37 C.F.R. § 251.63(b) in lieu of convening a Copyright Arbitration Royalty Panel ("CARP") to determine rates and terms for preexisting subscription services for such period.

BACKGROUND

The Digital Performance Right in Sound Recordings Act of 1995 ("DPRA") created a new exclusive right "to perform sound recordings publicly by means of a digital audio transmission." 17 U.S.C. § 106(6). The DPRA also provided for a statutory license to

facilitate certain performances by means of digital subscription transmissions. 17 U.S.C. § 114(f). Rates and terms for the initial period of this statutory license for the years 1996 through 2000 were set by a CARP in 1998. *See* 63 Fed. Reg. 25394 (May 8, 1998). RIAA, Music Choice, DMX and Muzak were the only parties who participated in that CARP proceeding.

In 1998, the Digital Millennium Copyright Act ("DMCA") amended the statutory license in Section 114 to cover additional categories of transmission services, and extended the term of the existing license for Music Choice, DMX and Muzak by one year (i.e., through December 31, 2001). *See* 17 U.S.C. § 114(d)(2). The DMCA also amended Section 112 to address ephemeral reproductions that facilitate the making of certain digital audio transmissions, including those pursuant to the statutory license in Section 114. *See* 17 U.S.C. §§ 112(a) & (e).

On January 9, 2001, the Copyright Office published a Federal Register notice initiating a voluntary six-month negotiation period to determine rates and terms for the statutory licenses covering the "preexisting subscription services" (*see* 17 U.S.C. § 114(j)(11)) as well as the "preexisting satellite digital audio radio services" ("PSDARS") (*see id.* § 114(j)(10)). Only the following users are covered by these categories: (a) Music Choice, DMX and Muzak, which are the three "preexisting subscription services"; and (b) XM Satellite Radio, Inc. ("XM") and Sirius Satellite Radio, Inc. ("Sirius"), which are the two PSDARS." *See* H.R. Rep. 105-796 at 80-81 (1998) (identifying the services that were known to exist prior to the passage of the DMCA).

After the close of the negotiation period, both Music Choice and RIAA filed a petition requesting that the Librarian of Congress convene a CARP to determine rates and terms for

both categories of preexisting services. XM and Sirius also filed a joint petition requesting that the Librarian convene a CARP to establish rates and terms for PSDARS. Notices of Intent to participate in that proceeding were filed in December 2001, *see* 66 Fed. Reg. 58,180 (Nov. 13, 2001) by Music Choice, DMX, RIAA, AFM, AFTRA, XM and Sirius, and the Office recently ordered that written direct cases in that proceeding must be filed by February 24, 2003. *See* Order dated December 16, 2002.

THE PETITIONERS AND THEIR AGREEMENT

The Petitioners have reached agreement on rates and terms governing preexisting subscription services for the period commencing January 1, 2002 and ending December 31, 2007. Exhibit A to this Petition contains the proposed amendments to the existing regulations in Part 260 of title 37 of the Code of Federal Regulations that are necessary to implement that agreement. Exhibit B contains the proposed amended version of Part 260. Petitioners hereby request that the Copyright Office promulgate regulations effecting the adjustment of the rates and terms in the manner reflected in Exhibits A and B. The proposed amendments in Exhibit A and B are submitted on the understanding that its various provisions are not severable.

Each of the Petitioners has a "significant interest" in the rates and terms that are the subject of this proceeding within the meaning of Section 803(a) of the Copyright Act. 17 U.S.C. § 803(a). RIAA is the trade group that represents the U.S. recording industry. Its member record companies create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States. SoundExchange, an unincorporated division of RIAA, administers the Section 112 and Section 114 statutory licenses on behalf of the vast majority of sound recording copyright owners in the United States.

AFTRA is part of the American Federation of Labor-Congress of Industrial Organizations ("AFL-CIO") and is a national labor organization representing over 80,000 performers and newsmen that are employed in the news, entertainment, advertising and sound recording industries. AFTRA's membership includes vocalists on sound recordings, both the royalty artists (who are entitled to 45% of the license receipts) and background singers (who are entitled to 2½% of the license receipts). AFTRA sits on the Board of SoundExchange, which distributes license receipts to featured artists, and on the Board of Trustees of the AFM and AFTRA Intellectual Property Rights Distribution Fund, which distributes license receipts to non-featured artists.

The American Federation of Musicians of the United States and Canada ("AFM") currently represents over 115,000 musicians who work in the music industries, including approximately 10,000 musicians who work in the recording industry. The AFM represents both featured artists (who are entitled to 45% of the license proceeds from preexisting subscription services) and background musicians (who are entitled to 2-1/2% of the license proceeds from preexisting services) who perform on the sound recordings of the major record companies and independent record companies in the United States. In addition, the AFM sits on the Board of SoundExchange, which distributes license proceeds to featured artists, and on the Board of Trustees of the AFM and AFTRA Intellectual Property Rights Distribution Fund, which distributes license proceeds to non-featured artists.

Music Choice is a Pennsylvania general partnership based in Horsham, Pennsylvania. Music Choice provides a digital audio music service under statutory license currently distributed to approximately 25 million households.

Muzak is a Delaware limited liability company headquartered in Fort Mill, South Carolina that provides a digital audio music service under statutory license.

DMX Music, Inc., a Delaware corporation, which was formed by the merger of DMX Music, Inc. and AEI Music Network, Inc. in May 2001, is a majority-owned subsidiary of Liberty Media Corporation, also incorporated in Delaware. DMX Music, Inc. is a leader in digital music programming and provides a digital audio music service under statutory license.

**REQUEST FOR IMMEDIATE STAY OF OBLIGATION
TO FILE DIRECT CASES ON FEBRUARY 24, 2003**


As the Petitioners have settled any disputes that they may have with respect to the adjustment of rates and terms for preexisting subscription services, the Petitioners request that the Copyright Office immediately issue a stay delaying the date on which direct cases in the above-referenced proceeding need be filed. Requiring the filing of direct cases in this proceeding by February 24, 2003 would be wasteful and require the Petitioners to incur unnecessary expenses when they have already voluntarily negotiated the rates and terms that are to govern the making of ephemeral phonorecords and digital audio transmissions of sound recordings by preexisting subscription services. Further, the stay of the filing date for direct cases would achieve the congressional objective of facilitating voluntary settlements rather than hindering their implementation.

CONCLUSION

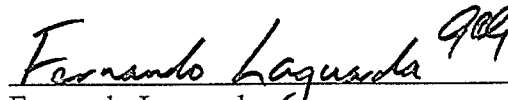
For the foregoing reasons, the Petitioners respectfully request that the Copyright Office adopt the proposed rates and terms and corresponding amendments to the rules and issue an immediate stay for the filing of direct cases in this proceeding on February 24, 2003.

Respectfully submitted,

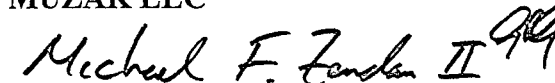
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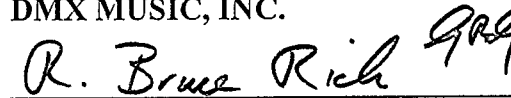
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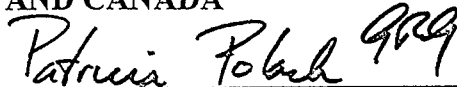
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Dated: January 17, 2003

CERTIFICATE OF SERVICE

I, Edward Hahn, of the Recording Industry Association of America, Inc., hereby certify that the foregoing Joint Petition for Adjustment of Rates and Terms for Statutory Licenses Applicable to Preexisting Subscription Services and Request for Immediate Stay of Obligation to File Direct Cases was served on January 17, 2003 by facsimile transmission and first class U.S. Mail, postage-prepaid, on the following individuals named in the Service List for Docket No. 2001-1 CARP DSTRA-2 published by the Copyright Office on January 8, 2002:

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Edward Hahn

EXHIBIT A

PROPOSED AMENDMENTS TO PART 260 OF TITLE 37 OF THE CODE OF FEDERAL REGULATIONS

Part 260 of 37 CFR is amended as follows –

The caption is deleted in its entirety and replaced with the following –

“PART 260—RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES’ DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE MAKING OF EPHEMERAL PHONORECORDS”

Section 260.1 is deleted in its entirety and replaced with the following –

“§ 260.1 – General

“(a) This part 260 establishes rates and terms of royalty payments for the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 114(d)(2), and the making of ephemeral phonorecords in connection with the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 112(e).

“(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 114(d)(2).

“(c) Upon compliance with 17 U.S.C. 112(e) and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 112(e) without limit to the number of ephemeral phonorecords made.

“(d) For purposes of this part, *Licensee* means any preexisting subscription service as defined in 17 U.S.C. 114(j)(11).”

Section 260.2 is amended as follows –

The caption is deleted in its entirety and replaced with the following –

“§ 260.2 – Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.

Sections 260.2(a) and (b) are deleted.

Section 260.2(c) is renumbered as 260.2(e).

Section 260.2(e) (as redesignated), is amended by –

In paragraph (1)(ii), inserting “a” between “to” and “recognized advertising agency”.

In paragraphs (1)(iii) and (vi), striking “Programming Service” and inserting “programming service”.

In paragraph (1)(viii) and (2), striking the cross references to subsection (c) and inserting cross references to subsection (e).

Section 260.2(d) is renumbered as 260.2(f).

The following new subsections are added –

“(a) *Royalty Fee for 2002 – 2003.* Commencing January 1, 2002 and continuing through December 31, 2003, a Licensee’s monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.0% of such Licensee’s monthly gross revenues resulting from residential services in the United States.

“(b) *Royalty Fee for 2004 – 2007.* Commencing January 1, 2004 and continuing through December 31, 2007, a Licensee’s monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.25% of such Licensee’s monthly gross revenues resulting from residential services in the United States.

“(c) *Annual Advance Payment.* Commencing in the year 2003 and continuing through the year 2007, each Licensee making digital performances of sound recordings pursuant to 17 U.S.C. 114(d)(2) and ephemeral phonorecords pursuant to 17 U.S.C. 112(e) shall make an advance payment of \$100,000 per year, payable no later than January 20th of each year; Provided, however, that for 2003, the annual advance payment shall be due on [*Copyright Office – insert the 20th day following the month in which these rates and terms are published in the Federal Register as a final rule*]. The annual advance payment shall be nonrefundable, but the royalties due and payable for a given year or any month therein under paragraphs (a) and (b) of this Section 260.2 shall be recoupable against the annual advance payment for such year; Provided, however, that any unused annual advance payment for a given year shall not carryover into a subsequent year.

“(d) A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received after the due date. Late fees shall accrue from the due date until payment is received.”

Section 260.3 is amended as follows –

In Section 260.3(b), strike “twentieth” and insert “forty-fifth”.

Sections 260.3(d) and (e) are deleted in their entirety and replaced with the following –

“(d) The designated agent may deduct from any of its receipts paid by Licensees under 260.2, prior to the distribution of such receipts to any person or entity entitled thereto, the reasonable costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that the parties entitled to receive royalty payments according to the provisions set forth at 17 U.S.C. 114(g)(1) & (2) who have authorized a designated agent may agree to deduct such other costs agreed to by such other parties and the designated agent.”

“(e) Until such time as a new designation is made, SoundExchange, which initially is an unincorporated division of the Recording Industry Association of America, Inc., shall be the agent receiving royalty payments and statements of account and shall continue to be designated if it should be separately incorporated.”

The following new subsection is added –

“(f) A Licensee shall make any payments due under § 260.2(a) for digital transmissions or ephemeral phonorecords made between January 1, 2002, and [*Copyright Office - insert the last day of the month in which these rates and terms are published in the Federal Register as a final rule*] 2003, to the Designated Agent, less any amounts previously paid for such period to the Recording Industry Association of America, Inc., or SoundExchange by [*Copyright Office – enter the 45th day following the month in which these rates and terms are published in the Federal Register as a final rule*].”

Section 260.4 is amended as follows –

Sections 260.4(a) and (b) are amended by striking “nonexempt subscription digital transmission service” in each instance and inserting “nonexempt preexisting subscription service”.

Sections 260.4(d)(1) and (e) are deleted in their entirety and replaced with the following –

“(d)(1) Those employees, agents, consultants and independent contractors of the designated agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related thereto, who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records; and”.

“(e) The designated agent or any person identified in paragraph (d) shall implement procedures to safeguard all confidential financial and business information, including, but not limited to royalty payments, submitted as part of the statements of

account, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the designated agent or such person.”

Section 260.5(b) is amended by striking “nonexempt subscription digital transmission service” and inserting “nonexempt preexisting subscription service”.

Section 260.6(g) is amended by striking “copyright owners”.

Section 260.7 is amended by striking “the cost of the administration of the collection and distribution of the royalty fees” and inserting “any costs deductible under 17 U.S.C. 114(g)(3)”.

EXHIBIT B

PART 260-- RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES' DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE MAKING OF EPHEMERAL PHONORECORDS

Sec.

260.1 General.

260.2 Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.

260.3 Terms for making payment of royalty fees.

260.4 Confidential information and statements of account.

260.5 Verification of statements of account.

260.6 Verification of royalty payments.

260.7 Unknown copyright owners.

§ 260.1 -- General.

(a) This part 260 establishes rates and terms of royalty payments for the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 114(d)(2), and the making of ephemeral phonorecords in connection with the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 112(e).

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 114(d)(2).

(c) Upon compliance with 17 U.S.C. 112(e) and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 112(e) without limit to the number of ephemeral phonorecords made.

(d) For purposes of this part, *Licensee* means any preexisting subscription service as defined in 17 U.S.C. 114(j)(11).

§ 260.2 -- Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.

(a) *Royalty Fee for 2002 – 2003.* Commencing January 1, 2002 and continuing through December 31, 2003, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.0% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(b) *Royalty Fee Commencing 2004 – 2007.* Commencing January 1, 2004 and continuing through December 31, 2007, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.25% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(c) *Annual Advance Payment.* Commencing in the year 2003 and continuing through the year 2007, each Licensee making digital performances of sound recordings pursuant to 17 U.S.C. 114(d)(2) and ephemeral phonorecords pursuant to 17 U.S.C. 112(e) shall make an advance payment of \$100,000 per year, payable no later than January 20th of each year; Provided, however, that for 2003, the annual advance payment shall be due on [*Copyright Office – insert the 20th day following the month in which these rates and terms are published in the Federal Register as a final rule*]. The annual advance payment shall be nonrefundable, but the royalties due and payable for a given year or any month therein under paragraphs (a) and (b) of this Section 260.2 shall be recoupable against the annual advance payment for such year; Provided, however, that any unused annual advance payment for a given year shall not carryover into a subsequent year.

(d) A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received after the due date. Late fees shall accrue from the due date until payment is received.

(e) (1) For purposes of this section, *gross revenues* shall mean all monies derived from the operation of the programming service of the Licensee and shall be comprised of the following:

(i) Monies received by Licensee from Licensee's carriers and directly from residential U.S. subscribers for Licensee's programming service;

(ii) Licensee's advertising revenues (as billed), or other monies received from sponsors if any, less advertising agency commissions not to exceed 15% of those fees incurred to a recognized advertising agency not owned or controlled by Licensee;

(iii) Monies received for the provision of time on the programming service to any third party;

(iv) Monies received from the sale of time to providers of paid programming such as infomercials;

(v) Where merchandise, service, or anything of value is received by Licensee in lieu of cash consideration for the use of Licensee's programming service, the fair market value thereof or Licensee's prevailing published rate, whichever is less;

(vi) Monies or other consideration received by Licensee from Licensee's carriers, but not including monies received by Licensee's carriers from others and not accounted for by Licensee's carriers to Licensee, for the provision of hardware by anyone and used in connection with the programming service;

(vii) Monies or other consideration received for any references to or inclusion of any product or service on the programming service; and

(viii) Bad debts recovered regarding paragraphs (e)(1)(i) through (vii) of this section.

(2) Gross revenues shall include such payments as are in paragraphs (e)(1)(i) through (viii) of this section to which Licensee is entitled but which are paid to a parent, subsidiary, division, or affiliate of Licensee, in lieu of payment to Licensee, but not including payments to Licensee's carriers for the programming service. Licensee shall be allowed a deduction from "gross revenues" as defined in paragraph (e)(1) of this section for affiliate revenue returned during the reporting period and for bad debts actually written off during the reporting period.

(f) During any given payment period, the value of each performance of each digital sound recording shall be the same.

§ 260.3 -- Terms for making payment of royalty fees.

(a) All royalty payments shall be made to a designated agent(s), to be determined by the parties through voluntary license agreements or by a duly appointed Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.

(b) Payment shall be made on the forty-fifth day after the end of each month for that month, commencing with the month succeeding the month in which the royalty fees are set.

(c) The agent designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these fees to

those parties entitled to receive such payment according to the provisions set forth at 17 U.S.C. 114(g).

(d) The designated agent may deduct from any of its receipts paid by Licensees under 260.2, prior to the distribution of such receipts to any person or entity entitled thereto, the reasonable costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that the parties entitled to receive royalty payments according to the provisions set forth at 17 U.S.C. 114(g)(1) & (2) who have authorized a designated agent may agree to deduct such other costs agreed to by such other parties and the designated agent.

(e) Until such time as a new designation is made, SoundExchange, which initially is an unincorporated division of the Recording Industry Association of America, Inc., shall be the agent receiving royalty payments and statements of account and shall continue to be designated if it should be separately incorporated.

(f) A Licensee shall make any payments due under § 260.2(a) for digital transmissions or ephemeral phonorecords made between January 1, 2002, and [*Copyright Office - insert the last day of the month in which these rates and terms are published in the Federal Register as a final rule*] 2003, to the Designated Agent, less any amounts previously paid for such period to the Recording Industry Association of America, Inc. or SoundExchange by [*Copyright Office - enter the 45th day following the month in which these rates and terms are published in the Federal Register as a final rule*].

§ 260.4 -- Confidential information and statements of account.

(a) For purposes of this part, confidential information shall include statements of account and any information pertaining to the statements of account designated as confidential by the nonexempt preexisting subscription service filing the statement. Confidential information shall also include any information so designated in a confidentiality agreement which has been duly executed between a nonexempt preexisting subscription service and an interested party, or between one or more interested parties; Provided that all such information shall be made available, for the verification proceedings provided for in §§ 260.5 and 260.6 of this part.

(b) Nonexempt preexisting subscription services shall submit monthly statements of account on a form provided by the agent designated to collect such forms and the monthly royalty payments.

(c) A statement of account shall include only such information as is necessary to verify the accompanying royalty payment. Additional information beyond that which is sufficient to verify the calculation of the royalty fees shall not be included on the statement of account.

(d) Access to the confidential information pertaining to the royalty payments shall be limited to:

(1) Those employees, agents, consultants and independent contractors of the designated agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related thereto, who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records; and

(2) An independent and qualified auditor who is not an employee or officer of a sound recording copyright owner or performing artist, but is authorized to act on behalf of the interested copyright owners with respect to the verification of the royalty payments.

(e) The designated agent or any person identified in paragraph (d) shall implement procedures to safeguard all confidential financial and business information, including, but not limited to, royalty payments, submitted as part of the statements of account, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the designated agent or such person.

(f) Books and records relating to the payment of the license fees shall be kept in accordance with generally accepted accounting principles for a period of three years. These records shall include, but are not limited to, the statements of account, records documenting an interested party's share of the royalty fees, and the records pertaining to the administration of the collection process and the further distribution of the royalty fees to those interested parties entitled to receive such fees.

§ 260.5 -- Verification of statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the statements of account by interested parties according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C. 114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).

(b) *Frequency of verification.* Interested parties may conduct a single audit of a nonexempt preexisting subscription service during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit a particular service with the Copyright Office, which shall publish in the Federal Register a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of intent to audit shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the service which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), their designated agents, or the entity designated by the copyright arbitration royalty panel in 37 CFR 260.3 to receive and to distribute the royalty fees.

§ 260.6 -- Verification of royalty payments.

(a) *General.* This section prescribes general rules pertaining to the verification of the payment of royalty fees to those parties entitled to receive such fees, according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C. 114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).

(b) *Frequency of verification.* Interested parties may conduct a single audit of the entity making the royalty payment during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit the entity making the royalty payment with the Copyright Office, which shall publish in the Federal Register a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of interest shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or

more; in which case, the entity which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), or their designated agents.

§ 260.7 -- Unknown copyright owners.

If the designated collecting agent is unable to identify or locate a copyright owner who is entitled to receive a royalty payment under this part, the collecting agent shall retain the required payment in a segregated trust account for a period of three years from the date of payment. No claim to such payment shall be valid after the expiration of the three-year period. After the expiration of this period, the collecting agent may use the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3).